

# REGULATORY BRANCH

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT



# Regulatory Branch

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT



US Army Corps  
of Engineers®  
Buffalo District  
*BUILDING STRONG®*

# REGULATORY MISSION

Our mission is to serve the public interest in Ohio and New York, providing responsive, quality service by balancing protection and reasonable use of aquatic resources through efficient administration of the Regulatory Program.

## REGULATORY PROGRAM CONTACT INFORMATION

### Buffalo District Office

716-879-4330, Fax 716-879-4310  
1776 Niagara Street, Buffalo, NY 14207  
Email: LRB.Regulatory@usace.army.mil

### Auburn Field Office

315-255-8090, Fax 315-255-1492  
7413 County House Road, Auburn, NY 13021

### Oak Harbor Field Office

419-898-3491, Fax 419-898-4292  
240 Lake Street, Unit D, Oak Harbor, OH 43449

### Orwell Field Office

440-437-5847, Fax 440-437-5842  
33 Grand Valley Avenue, Orwell, OH 44076

### Stow Field Office

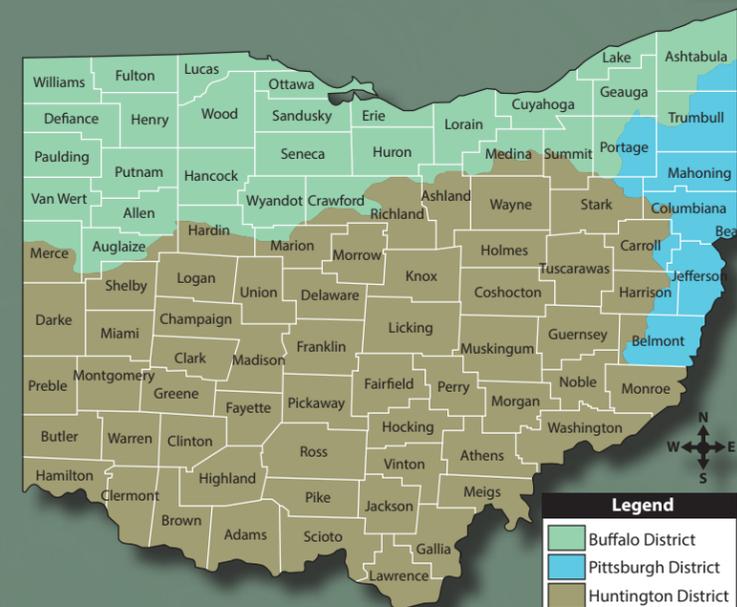
330-923-8197, Fax 330-923-8146  
1100 Graham Road Circle, Stow, OH 4422

<http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>

## NEW YORK



## OHIO



Mission

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

*The understanding and support of New York and Ohio is vital to the success of the program. We must work together to protect New York and Ohio's water resources, ensuring their use and enjoyment for future generations, while enabling responsible development.*

**OUR HISTORY** .....1

**WHAT IS A WETLAND?** .....2

**JURISDICTION**.....3

**PERMITS** .....4

**APPEALS** .....5

**MITIGATION**.....6

**COMPLIANCE & ENFORCEMENT** ...7

## **WORKING TOGETHER**

Every year, citizens of New York and Ohio begin work on numerous construction projects that could potentially impact the state's rivers, streams, wetlands and other aquatic resources. Many of these projects have tremendous value for individuals, communities and the economy.

Through the Regulatory Program, the U.S. Army Corps of Engineers (Corps) ensures that environmental impacts on aquatic resources from these projects are avoided, minimized and mitigated. The Corps is dedicated to protecting New York and Ohio's waters while allowing reasonable and necessary development to move forward. The Corps asks for your help in spreading the word to others about the permit requirements outlined here and solicits your views on better ways of attaining the goals of this program.



*Your comments, questions, and suggestions can be sent to your local Regulatory Office.*



**Mission**

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

# U.S. ARMY CORPS OF ENGINEERS REGULATORY PROGRAM

The Department of the Army Regulatory Program is one of the oldest programs in the federal government. Initially, the Regulatory Division (RD) served a fairly simple, straightforward purpose: to protect and maintain the navigable capacity of the nation's waters, under Section 10 of the Rivers and Harbors Act of 1899. In 1972, the Clean Water Act was signed into law, and the Department of the Army was directed to administer Section 404 of the Act, which regulates the discharge of dredged and/or fill material in waters of the United States. In 1977, the Corps of Engineers' jurisdiction was increased to include wetlands as part of the Waters of the US.



CLEVELAND HARBOR, OHIO



FINGER LAKES, NEW YORK



Our History

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

## WHAT IS A WETLAND?

The Corps and the US Environmental Protection Agency (USEPA) define wetlands as “areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

Wetlands generally include swamps, marshes, bogs and similar areas. Some wetlands, such as swamps or marshes, are often obvious, but some wetlands are not easily recognized because they are dry during part of the year or don't appear to be very wet.

Wetlands serve important functions relating to fish, wildlife and people. These include food chain production and habitat for nesting, spawning, rearing and resting sites for aquatic and land species. Wetlands also protect uplands from erosion, provide storage for storm and floodwaters, and perform natural water filtration and purification functions.



## HOW DOES THE CORPS DETERMINE IF AN AREA IS A WETLAND?

Determining whether an area is a wetland under the Corps' authority is an important step. Certain activities in Corps regulated wetlands and other waters require a permit, which the Regulatory Branch realizes adds time and paperwork to projects. Consequently, a scientific process is followed to make wetland determinations. Under normal circumstances, if an area exhibits positive criteria for wetland plants, soils and hydrology, is it determined to be a wetland under the Regulatory Program.

A site visit is the most accurate way to determine if an area is a wetland, but the Corps can also utilize additional resources, including existing:

- Soil maps
- Wetland mapping
- Photos provided by applicants, aerial photos, and previous site visits
- USGS



### What is a wetland?

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

## LINKS AND RESOURCES

National Wetlands Inventory maps produced by the U.S. Fish and Wildlife Service are available at: [www.fws.gov/wetlands/](http://www.fws.gov/wetlands/)

Soil surveys from the Natural Resources Conservation Service can be accessed at: [www.websoilsurvey.nrcs.usda.gov/app/](http://www.websoilsurvey.nrcs.usda.gov/app/)

### NWI AND SOILS MAPS DISCLAIMER:

Please note that National Wetland Inventory (NWI) Maps are NOT site specific aquatic resource delineations verified by the U.S. Army Corps of Engineer.

The NWIs were created by the U.S. Fish and Wildlife Service for their use as habitat planning maps – these are not Army Corps maps. The NWIs can serve as a resource to provide general information pertaining to a specific parcel; however, these maps CANNOT be used to confirm presence/absence of wetlands, wetland boundaries, nor do they adequately depict other aquatic resources such as intermittent or ephemeral streams that may be present on a parcel. In most cases, the only definitive answer is by an on-site determination and or delineation by a qualified wetland biologist.

Also note that the National Resource Conservation Service Soil Survey and soil maps depict GENERAL soil mapping and descriptions. Any statements indicating that the overall soil series is not considered hydric may not (and many times does not) confirm the absence of hydric soils within a given parcel.

### Federal Wetland Maps Disclaimer:

A site specific aquatic resource delineation is required to be completed by applicants proposing to fill jurisdictional aquatic resources. There are no federal maps designating jurisdiction of aquatic resources. Jurisdictional determinations need to be made through the scientific process which requires on-site analysis; due-diligence of the property owner.

*Building activities that may require permits include (but are not limited to):*

- Placement of fill material
- Ditching activities when the excavated material is sidecast
- Mechanized land clearing
- Land leveling
- Most road construction
- Dam construction, weirs
- Mining activities
- Structures in navigable waters
- bank stabilization; utility line installation
- Culverts (Example but not limited to topsoil, concrete, grading)

*See page 24 for definitions*



## What is a wetland?

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

# WHAT TYPES OF WORK REQUIRE A PERMIT?

## SECTION 10

Section 10 of the Rivers and Harbors Act of 1899 requires approval prior to the accomplishment of any work in, over, or under navigable waters of the United States, or which affects the course, location, condition or capacity of such waters.

Typical activities requiring authorization under Section 10 include:

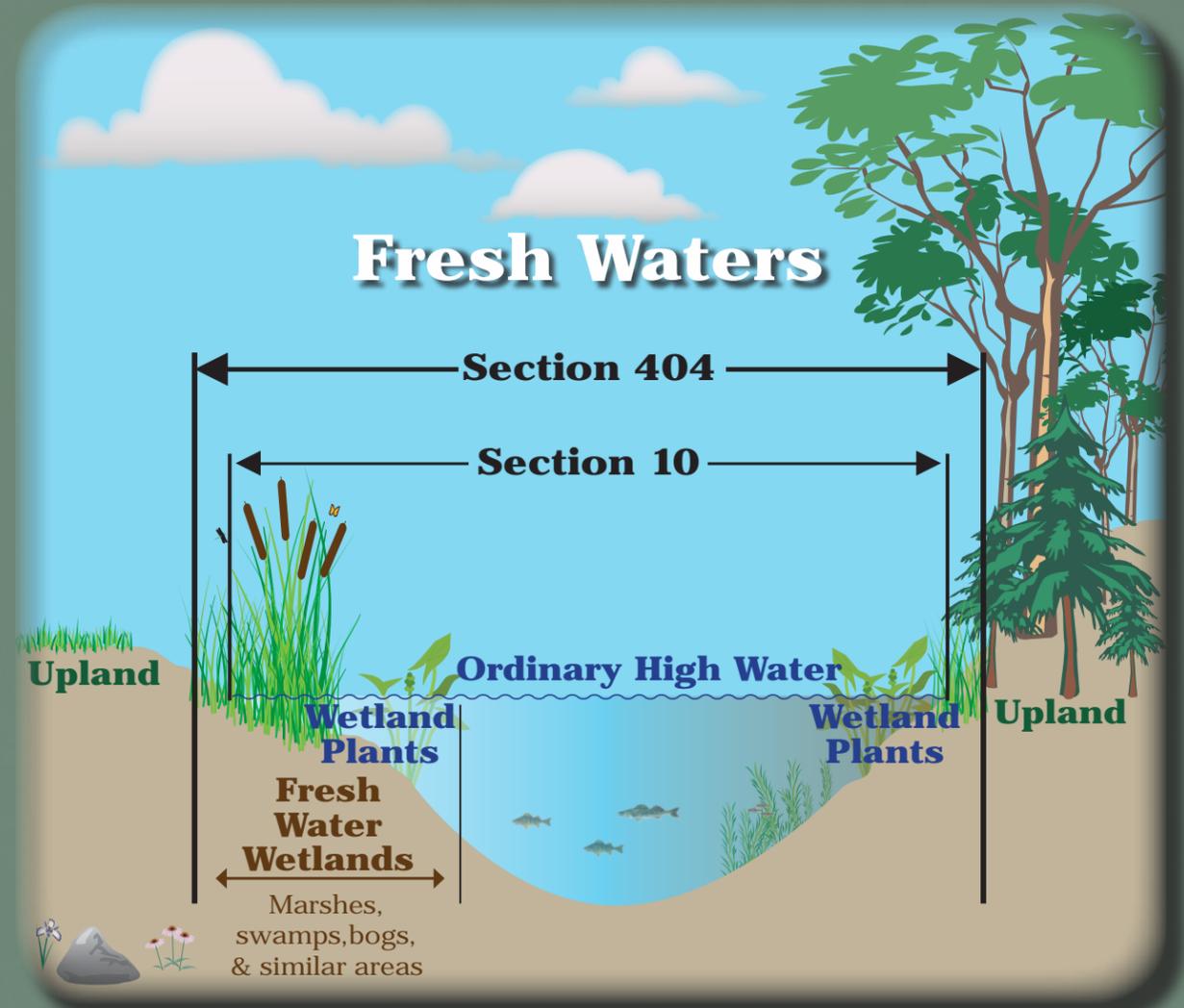
- Construction of piers, wharves, breakwaters, jetties, weirs, marinas, ramps, floats, intake structures, and cable or pipeline crossings
- Work such as dredging or disposal of dredged material
- Excavation, filling or other modifications to navigable Waters of the US.

## SECTION 404

Section 404 of the Clean Water Act requires permit authorization to discharge dredged or fill material into the Waters of the United States, including wetlands.

Typical activities requiring authorization under Section 404 include:

- Discharging fill or dredged material in Waters of the US, including wetlands
- Site development fill for residential, commercial or recreational projects, including mechanized land clearing, construction of breakwaters, levees, dams, dikes and weirs
- Placement of riprap and road fills



The permit evaluation process balances the need for development with protection of aquatic resources.



**Jurisdiction**

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

## WHO SHOULD OBTAIN A PERMIT?

Any person, firm or agency (including federal, state and local government) planning to place structures or conduct work in navigable waters of the United States, or discharge (dump, place or deposit) dredged or fill material in Waters of the US must first obtain a permit from the Corps of Engineers. Other federal, state and local statutes may require additional permits, licenses, variances or similar authorization.

### TYPES OF PERMITS

#### INDIVIDUAL PERMITS

Individual Permits are issued following a full public interest review of a permit application for a Department of the Army permit. A public notice (usually 30 days in length) is distributed to all known interested persons. The permit decision is generally based on the outcome of a public interest balancing process, where the benefits of the project are weighed against the detriments. A permit will be granted unless the proposal is found to be contrary to the public interest or fails to comply with the USEPA's 404(b)(1) Guidelines. The 404(b)(1) Guidelines allow the Corps to permit only the least environmentally damaging practicable alternative.

Processing time usually takes 90 to 120 days, unless a public hearing is required or an Environmental Impact Statement (EIS) must be prepared.

#### LETTERS OF PERMISSION

Letters of Permission (LOP) are a type of permit issued through an abbreviated processing procedure, which includes coordination with Federal and state agencies, adjacent property owners, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without the publishing of an individual public notice. Processing time routinely takes 120 days after receipt of a complete application; however, more complex or controversial projects may extend processing time.

#### REGIONAL GENERAL PERMITS

Regional Permits are issued by the Buffalo District Engineer for a general category of activities when the activities are similar in nature and cause minimal environmental impact, both individually and cumulatively. Processing time usually takes less than 60 days after receipt of a complete application.

#### NATIONWIDE PERMITS

Nationwide Permits (NWP) authorize specific activities in areas under Corps' Regulatory jurisdiction (navigable waterways, wetlands, etc.). These activities are minor in scope and must result in no more than minimal adverse impacts, both individually and cumulatively. Individuals wishing to perform work under a NWP must ensure their project meets all applicable terms and conditions, including the regional conditions specific to Buffalo. If the conditions cannot be met, an individual permit will be required. Processing time usually takes less than 60 days after receipt of a complete application.



Permits

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

## HOW DO I APPLY FOR PERMITS?

Visit <http://www.lrb.usace.army.mil/Missions/Regulatory/ApplicationForms.aspx> to access application forms and information on completing them, or contact the Buffalo District office at (716)879-4330 to request a permit application form to be sent to you in the mail.

### WHAT HAPPENS AFTER I APPLY?

- Regulatory reviews permit application for completeness, and contacts the applicant if additional information is required.
- Jurisdiction is determined. Not all activities are regulated, and some project sites are not within the Corps' jurisdictional authority.
- If a permit is required, a Regulatory Project Manager will determine what type of permit is appropriate and coordinate with other agencies and the public.
- If appropriate an environmental assessment is prepared, which aids with permit decision-making.
- The permit is issued if in the public interest and in compliance with the 404(b)(1) Guidelines.
- Regulatory staff may visit the site before, during and/or after construction.
- See page 24 for list of required permit application



*FINGER LAKES, NEW YORK*

The Corps' Regulatory Program evaluation process results in permit decisions that balance the need for proposed development with protection of the nation's aquatic environment.



**Permits**

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

# MITIGATION

On April 10, 2008, the Corps and the USEPA published a new rule, entitled “Compensatory Mitigation for Losses of Aquatic Resources; Final Rule (Rule).” The Rule addresses the sequence for mitigating impacts to aquatic resources that result from work authorized by permits under the Corps’ Regulatory Program.

All steps to avoid and/or minimize impacts to aquatic resources must be taken before proposing compensatory mitigation to offset project impacts. The Rule establishes standards and criteria for all types of compensatory mitigation, including mitigation banks.

To offset authorized unavoidable impacts to Waters of the US, permit applicants are required to describe how they will avoid, minimize and compensate for impacts to Waters of the US as follows:

## MITIGATION SEQUENCE

### 1) Avoid

Describe how, in your project-planning process, you will avoid impacts to Waters of the US to the greatest extent practicable. Examples of avoidance measures include site selection, use of alternate routes, and modification of design configurations.

### 2) Minimize

Describe how your project design will incorporate measures that minimize unavoidable impacts to Waters of the US by limiting discharges of fill to the minimum amount/size necessary to achieve the project purpose.

### 3) Compensatory Mitigation

Once all efforts to avoid and minimize impacts have occurred, remaining impacts may be offset by compensatory mitigation. Describe how your proposed compensatory mitigation would offset unavoidable impacts to Waters of the US, or alternatively, why compensatory mitigation is not appropriate or practicable for your project. Compensatory mitigation involves actions taken to offset authorized unavoidable adverse impacts to Waters of the US, including wetlands, streams and other aquatic resources.



Mitigation

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

# WHAT IS COMPENSATORY MITIGATION?

Compensatory mitigation tools include purchase of credits from a mitigation bank or in-lieu-fee program, and permittee responsible mitigation (for example: establishment, reestablishment, enhancement).” Refer to page 19 for more information.

For unavoidable impacts, compensatory mitigation is required to replace the loss of wetland, stream and/or other aquatic resource functions. Methods of providing compensatory mitigation include aquatic resource restoration, establishment, enhancement, and in certain circumstances, preservation.



## COMPENSATORY MITIGATION

A permittee-responsible compensatory mitigation plan should include:

- Objectives
- Site selection criteria
- Site protection instrument
- Baseline information
- Determination of credits
- Mitigation work plan
- Maintenance plan
- Performance standards
- Monitoring requirements
- Long-term management plan
- Adaptive management plan
- Financial Assurances
- Other relevant information

For more on permitting and the permits issued by the Corps, visit our website at <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>



Mitigation

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

## APPEALS

The Corps has an administrative appeal process whereby applicants and landowners may appeal denied permits, issued permits that contain requirements that are unacceptable to the applicant, or approved jurisdictional determinations, which are made by the Buffalo District. The request for an appeal of such decisions must be received by the Great Lakes and Ohio River Division office within 60 days of the date of the appealable decision. A site visit or an appeal conference or meeting may be conducted during the appeal process. A decision on the merits of the appeal is based on a review of the District's administrative record and is made by the Division office. The Division will either uphold the District decision or remand the case back to the District with instructions the District must follow to reconsider the initial determination.



The level of evaluation is on par with the level of the environmental impacts, aquatic functions and values involved in a particular area. Impacts to higher ecological value areas will be subject to a more detailed evaluation and a strong focus on avoidance of impacts to the aquatic environment.

For more on permitting and the permits issued by the Corps, visit our website at <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>



Appeals

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

## COMPLIANCE

Once a permit is issued, compliance with all terms and conditions of the permit is required. The Corps may conduct inspections during or after construction to determine if the work is in compliance with the permit. If the Corps determines the work is not in compliance with the permit, there are several options the Corps may pursue with the permittee to resolve the non-compliance action. These options include voluntary restoration, permit modification and/or pursuit of administrative penalties.

In cases where resolution of the violation cannot be reached, the Corps may issue a compliance order. If a permittee fails to comply with the compliance order, the Corps may suspend or revoke the permit and/or initiate administrative penalties up to \$27,500 or take legal action for criminal or civil actions to obtain penalties. Penalties of up to \$50,000 per day and/ or imprisonment for up to three years may be imposed for any person who knowingly violates the Clean Water Act



TOLEDO, OHIO

## ENFORCEMENT

Performing work in Waters of the US without proper Corps authorization can have serious consequences. Enforcement is an important part of the Corps' Regulatory program. State and federal agencies, groups and individuals that report suspected violations often aid Corps' surveillance and monitoring activities. The Corps may issue orders requiring corrective action including removal of the unauthorized fill/structure, restoration of the area, accept an after-the-fact permit application, initiate legal action, or recommend referral to the USEPA for administrative, civil, or criminal penalties. The USEPA has independent enforcement authority under the Clean Water Act for unauthorized discharges. The Corps works closely with the USEPA to coordinate the most effective and efficient resolution of Section 404 Clean Water Act violations.

If you suspect a violation of the Clean Water Act, please contact the Buffalo District at 716.879.4330 or e-mail: [Regulatory@usace.army.mil](mailto:Regulatory@usace.army.mil)



CLEVELAND, OHIO



# Compliance and Enforcement

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT